Minette Mills, Inc. *and* Amalgamated Clothing and Textile Workers Union, AFL–CIO. Case 11–CA–13862

March 31, 1995

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

On December 31, 1991, the National Labor Relations Board issued a Decision, Order, and Direction of Second Election in this proceeding,[1] directing the Respondent, Minette Mills, Inc. to, among other things, make whole employees Van Douglas Wright and Debra Carol Wright for their losses resulting from its unfair labor practices. The United States Circuit Court of Appeals for the Fourth Circuit enforced the Board's order in its entirety on January 7, 1993.[2] A controversy having arisen over the amount of backpay due under the terms of the Board's Order, as enforced by the court of appeals, the Regional Director for Region 11 issued a backpay specification and notice of hearing on July 30, 1993. The Respondent filed an answer. A hearing was held on January 19 and 20, 1994, before Administrative Law Judge Richard J. Linton.

On May 17, 1994, the administrative law judge issued the attached supplemental decision and order. The Respondent filed exceptions and a supporting brief.

The Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached supplemental decision in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[3] and conclusions and to adopt the recommended Order, as modified.[4]

[1] 305 NLRB 1032.

[2] 983 F.2d 1056.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[4] The Respondent has excepted to the judge's adjustment of the gross backpay figure for Van Douglas Wright for the fourth quarter of 1990. Noting what appeared to be a mathematical error in the average hours worked during the week ending December 8, 1990, the judge added $105 to gross backpay for the quarter in order to correct the apparent error. If the printed total for that week had actually been incorporated into the computations for the quarter, the judge's adjustment would have been correct. As the Respondent points out, however, the error was merely a printing error, not a mathematical error. The total hours for the quarter was correct and no adjustment to gross backpay was necessary. We modify the order to eliminate the extra $105.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Minette Mills, Inc., Grover, North Carolina, its officers, agents, successors, and assigns, shall pay the sums set forth in the Order as modified.

Insert the following as the total amount of backpay due Van Douglas Wright: ''$23,985.''

Joseph T. Welch, Esq., for the General Counsel.

Thomas T. Hodges, Esq. (Haynsworth, Baldwin, Johnson & Greaves), of Greenville, South Carolina, for the Respondent.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge. This is a backpay case. It is a compliance proceeding to determine the amount of backpay which the Respondent, Minette Mills (Minette), owes to Van Douglas Wright and to Debra Carol Wright as a result of unlawfully discharging them on April 30, 1990. Liability was determined against Minette in the underlying unfair labor practice case, reported as *Minette Mills*, 305 NLRB 1032 (1991), enfd. 983 F.2d 1056 (4th Cir. 1993). Generally agreeing here with the Government, I order Minette to pay backpay (plus interest, less taxes required by law to be withheld) as follows:

Van Douglas Wright	$24,090
Debra Carol Wright	32,516

I presided at this 2-day trial in Shelby, North Carolina, on January 19 and 20, 1994, pursuant to the December 1, 1993, amended compliance specification (ACS) issued by the Regional Director for Region 11 of the National Labor Relations Board on behalf of the Board.

Minette manufactures home furnishing textile products at its plant in Grover, North Carolina. In 1990 the Union (Amalgamated Clothing and Textile Workers Union, AFL–CIO) conducted an organizing drive at Minette's Grover plant. Douglas and Debra Wright, husband and wife, supported the Union. On April 30, 1990, Minette fired the two Wrights. The lawfulness of the discharge was one of the issues presented to Administrative Law Judge J. Pargen Robertson in late 1990. On April 4, 1991, Judge Robertson found that the discharge of the Wrights was unlawful. With its December 31, 1991 decision adopting that portion of Judge Robertson's decision, the Board ordered Minette to offer the Wrights reinstatement and to make them whole, with interest. *Minette Mills*, 305 NLRB 1032 (1991), enfd. 983 F.2d 1056 (4th Cir. 1993). By certified letters dated February 11, 1993, Minette offered reinstatement to Douglas Wright (G.C. Exh. 2) and to Debra Wright (G.C. Exh. 7). (1:121–122.)[1] The

[1] References to the two-volume transcript of testimony are by volume and page. Exhibits are designated as G.C. Exh. for the General Counsel's and R. Exh. for those of Respondent Minette Mills. Apparently because the transcript for January 20, 1994 (the second day of the hearing), is large at 354 pages, the court reporting service di-

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Wrights claimed the letters at the post office on Tuesday, February 16, and called Minette that same day, speaking with Sheila Gardner, Minette's then personnel director. To allow time for notice to the current interim employers, the parties agreed on a return date of March 1. (2:254–257, 335–337.)

When the parties could not agree on the amount of the backpay due Douglas and Debra Wright, the Regional Director issued a compliance specification followed, on December 1, 1993, by the ACS (amended compliance specification). On January 10, 1994, the Regional Director issued an amendment to the ACS in which he corrected certain items on appendices D (calculation sheet for Douglas Wright) and E (calculation sheet for Debra Wright). As so amended, the ACS was the General Counsel's trial pleading and alleged net backpay of $29,874 due Douglas Wright and $41,864 due Debra Wright.[2] Unless otherwise specified, reference to the ACS is to the trial pleading. Attached to the Government's posthearing brief are amended figures for appendices D and E, of the ACS, based on evidence, and stipulations, adduced at the hearing.

Minette defends on the following five grounds. First, the backpay period should end on February 11, 1993, the date Minette ''made'' its offers of reinstatement, rather than the February 19 date selected by NLRB Region 11. Second, the gross backpay formula of the ACS must be modified to include certain employees who were temporarily laid off. Third, the Wrights incurred a willful loss of interim earnings. Fourth, the ACS overstates the allowable expenses incurred by the Wrights. And fifth, the backpay must be reduced for periods when the Wrights were unavailable for work.

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel and the Respondent, Minette, I make the following

FINDINGS OF FACT

I. GOVERNING LEGAL PRINCIPLES

The controlling legal principles are well settled by many cases. In summary they are as follows. First, when loss of employment is caused by a violation of the Act, a finding by the Board that an unfair labor practice was committed is presumptive proof that some backpay is owed. *Arlington Hotel Co*., 287 NLRB 851, 855 (1987), enfd. on point 876 F.2d 678 (8th Cir. 1989).

Second, respecting the close of the backpay period, an offer of reinstatement ''must be unequivocal, specific, and unconditional.'' *A-1 Schmidlin Plumbing Co*., 312 NLRB 191 (1993).

Third, in compliance proceedings, the General Counsel bears the burden of proving the amount of gross backpay due. *Florida Tile Co*., 310 NLRB 609 (1993); *Arlington Hotel*, Id. In discharging the Government's burden, the General Counsel has discretion in selecting a formula which will closely approximate the amount due. The Government need not find the exact amount due nor adopt a different and equally valid formula which may yield a somewhat different result. *NLRB v. Overseas Motors*, 818 F.2d 517 (6th Cir. 1987); *Kansas City Refined Helium Co*., 252 NLRB 1156, 1157 (1980), enfd. 683 F.2d 1296 (10th Cir. 1982). Nevertheless, an Administrative Law Judge need not recommend the General Counsel's gross backpay formula to the Board when a more accurate one is established in the record. *Frank Mascali Construction*, 289 NLRB 1155, 1157 (1988); *J. S. Alberici Construction Co.*, 249 NLRB 751 fn. 3 (1980).

Fourth, the burden is on the employer who committed the unfair labor practice to establish facts that reduce the amount due for gross backpay. *Florida Tile*, supra. Thus, the burden of showing the amount of any interim earnings, or a willful loss of interim earnings, falls to the Respondent (Minette here). *Arlington Hotel*, supra. Although it is the Respondent's burden to establish a discriminatee's interim earnings, if any, it is the General Counsel's voluntary policy to assist in gathering information on this topic and to include that data in the compliance specification. *Florida Tile*, supra; *Arlington Hotel*, supra; NLRB Casehandling Manual (Part Three), Compliance, sections 10540.1 and 10629.9. As described in a recent case, the voluntary policy is nothing more than an ''administrative courtesy.'' *Ryder System*, 302 NLRB 608, 613 fn. 7 (1991), enfd. 983 F.2d 705 (6th Cir. 1993).

Fifth, even though a discriminatee must attempt to mitigate his or her loss of income, the discriminatee is held only to a reasonable assertion rather than to the highest standard of diligence, and success is not the test of reasonableness. *Florida Tile*, supra; *Arlington Hotel*, supra. Interim employment means comparable work—substantially equivalent employment. Thus, it is well established that a discriminatee's obligation to mitigate an employer's backpay liability requires only that the discriminatee accept substantially equivalent employment. *Arlington Hotel*, supra.

Sixth, when a discriminatee voluntarily quits interim employment, the burden shifts from the Respondent to the Government to show that the decision to quit was reasonable. *Big Three Industrial Gas*, 263 NLRB 1189, 1199 (1982); NLRB Casehandling Manual (Part Three), section 10545.4. (On a single point, respecting concealment of interim earnings, the Board subsequently overruled *Big Three*, supra. *American Navigation Co*., 268 NLRB 426, 427 (1983). Other points in *Big Three* were not disturbed.)

Seventh, a discharge from interim employment, without more, does not constitute a willful loss of employment. *Ryder System*, supra at 610. As the Board stated there, to carry its burden:

> A respondent must show deliberate or gross misconduct on the part of the discharged employee in order to establish a willful loss of employment. Here we find that the Respondents failed to show that Larry Elmore's conduct fell within that standard. Elmore may have missed several scheduled deliveries, but he committed no offense involving moral turpitude and his conduct was not otherwise so outrageous as to suggest deliberate courting of discharge. [Footnote citations omitted.] Without such proof, Elmore's discharge from [interim employer] ATS will not serve as a basis for tolling his backpay. [Footnote omitted.]

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vided the day into two volumes. I have restrung the day as a single volume, volume two of the transcript.

[2] Consistent with the Internal Revenue Service procedure American taxpayers are familiar with in calculating their Federal income taxes, I have rounded pennies of line items to the nearest dollar. Thus, 50 cents and more are reflected at the next higher dollar, and 49 cents and less are rounded to the next lower dollar. (IRS Publication 17 for 1993 Tax Year, at 15.)

Eighth, if a discriminatee incurs any reasonable and necessary expenses in earning interim income (above what would have been incurred working for the Respondent), it is the General Counsel's burden to establish the amounts of those expenses. *Arlington Hotel*, supra. Such expenses are deducted from interim earnings. They are not added to gross backpay. NLRB Casehandling Manual (Part Three), section 10544.

Ninth, statutory ''back pay'' does not include reimbursement for collateral losses resulting from distress sales of a home, automobile, tools, or similar personal assets. *Laborers Local 38 (Hancock-Northwest)*, 268 NLRB 167, 170 (1983), modified slightly on unrelated point 748 F.2d 1001 (5th Cir. 1984); NLRB Casehandling Manual (Part Three), section 10530.1. Thus, in the Wrights' struggle to survive during the backpay period, any losses they sustained when they had to pawn personal items, including Debra Wright's wedding ring (1:174), are not recoverable.

Tenth, as Minette is the wrongdoer who caused the Wrights' initial unemployment, any ambiguities, doubts, or uncertainties are resolved against Minette, the wrongdoer, because an offending respondent is not allowed to profit from any uncertainty caused by its discrimination. *Florida Tile Co*., supra, 310 NLRB at 610; *Ryder System*, 302 NLRB 608 and fn. 4 (1991), enfd. 983 F.2d 705 (6th Cir. 1993); *Big Three Industrial Gas*, supra, 263 NLRB at 1190 fn. 8.

II. THE EVIDENCE

A. *Introduction*

For the Government's first witness, the General Counsel called Jack Bradshaw, NLRB Region 11's supervisory compliance officer since 1980. (1:13.) In lengthy testimony, Bradshaw explained, and was cross-examined concerning, the basis for the gross backpay formula, the interim earnings, expenses, and calculations in the ACS. The next witness was (Van) Douglas Wright (1:118), followed by his stepson, David C. Irvin (1:233), and Debra Carol Wright (2:247). These three testified about interim earnings, efforts to obtain interim employment, and about expenses. The General Counsel then rested. (2:347.) Debra Wright's maiden name, and apparently still her ''legal'' name, is Debra Carol Strange. (2:247, 262.) On April 22, 1961, during the backpay period, she left her husband, Douglas Wright, and moved back to her mother's home. (2:234.) Her mother's home is on adjoining land. (1:174, 218–219.) Although Douglas Wright testified that they are divorced and have not moved back together (1:219), she testified (2:248) that they are back together. His testimony could be interpreted as meaning that they divorced after he was fired by Elizabeth Weaving in October 1991. In any event, as the parties have referred to her as Debra Wright at the hearing and in their posthearing briefs, I shall do the same.

Respondent Minette's six witnesses consisted of personnel directors from three of the principal interim employers, one supervisor from a principal interim employer, and two former personnel directors of Minette. Respondent then rested. (2:574.) The General Counsel called Debra Wright in rebuttal. (2:575.) Minette offered no surrebuttal evidence. (2:582.)

B. *Termination of the Backpay Period*

Paragraph 1 of the ACS describes the backpay period as beginning on April 30, 1990, and closing on February 19, 1993, ''the date the Respondent's reinstatement offers were effective.'' Denying the closing date, Minette asserts in answer and on brief that the correct ending date is February 11, 1993, the date ''full reinstatement was offered to Debra Wright and Douglas Wright.''

The February 11 letters (G.C. Exhs. 2, 7) offering reinstatement have identical text reading:

> This is to extend to you an offer of reinstatement to your former position. If you would like to accept our offer please contact our personnel department. If we have not heard from you by February 26, 1993 [a Friday], we will assume that you have declined our offer.

The letters were sent by certified mail. The Wrights testified that late on Friday (February 12) they found the postal notices informing them of the certified letters which they picked up the following Tuesday, February 16. That same day they called Minette and spoke with Sheila Gardner, the then personnel director (2:495) for Minette. To allow time for the Wrights to give notice to their current interim employers, the date of (Monday) March 1, 1993, was agreed on for them to come in and sign forms and fix a return date. They resumed work on March 2. (1:121–123; 2:254–257, 335–337.)

What date is correct for closing the liability period? February 11, the date of the letter (and apparently the date of mailing), as Minette contends? Or February 12, the date the U.S. Postal Service attempted delivery (leaving a notice because of their absence)? Should it be February 16, the date that the Wrights actually received the letter offers? Perhaps it should be March 1 or 2 when the parties agreed for the Wrights to return. The ACS picks (Friday) February 19. Minette contends that February 19 is an arbitrary date.

Supervisory Compliance Officer Bradshaw testified that February 19 was picked because the February 11 letters did not offer reinstatement on a date certain and that such a date was not set until ''on or about February 19th in their communications with the Employer.'' (1:16.) Therefore, Bradshaw continues, NLRB Region 11 determined that (Friday) February 19 was the earliest date the Wrights could have effectively returned based on their telephone conversation with Sheila Gardner. (1:16.) Bradshaw's ''on or about'' February 19 appears to refer to the telephone conversation of February 16. This is made clear from his second statement, that February 19 was selected because it allowed the Wrights a brief time (3 days) to return to Minette.

Although the date of February 19 falls short of the time the Wrights needed to give notice to their interim employers, I find that it represents a reasonable selection of the date when the offers of reinstatement were effective. Accordingly, I find that, as alleged in the ACS, the backpay period covers April 30, 1990, to February 19, 1993.

C. *The Gross Backpay Formula*

1. Introduction

Douglas and Debra Wright began working for Minette in September 1989. (1:119; 2:249–250); *Minette Mills*, 305

NLRB 1032, 1037 (1991). In January 1990 they moved from the day shift to the second shift where they were working at the time of their April 30, 1990 discharge. *Minette Mills*, supra at 1040. At Minette (Douglas) Wright worked as a loom fixer (1:119) and his wife, Debra, operated looms as a weaver (2:249). As a fixer, Wright kept looms in operating repair. *Minette Mills*, supra at 1037. At Minette, Wright worked 5 to 7 days a week, 8 to 10 hours a day, and never was included in any layoffs. (1:120, 217.) At the time of his April 30, 1990 discharge Wright's regular hourly pay was $10.54. (1:120.) Debra Wright worked 5 to 6 days a week at Minette, 8 to 10 hours a day. Because she made production on incentive pay, Debra Wright earned an average hourly pay rate of $9. (2:249–250, 342.) There were no economic layoffs in her department, and all the weavers worked 8 to 10 hours a day, 5 to 6 days a week. (2:342–343.)

As explained in NLRB Casehandling Manual (Part Three), section 10532.1 ''The objective in determining gross backpay is to reconstruct as accurately as possible what employment and earnings the discriminatee would have had during the backpay period had there been no unlawful action.'' The section goes on to describe three basic methods for calculating gross backpay, with formula two being the hours and earnings of comparable employees. Compliance Supervisor Bradshaw testified that, based on records of Minette, the ACS employs the method of representative second-shift fixers and weavers. (1:17–18.)

Respecting potential absenteeism, section 10533.4 of the compliance manual (NLRB Casehandling Manual (Part Three)) contains the following relevant paragraph:

> When backpay is based on comparison with a group of employees, the Board has approved a method of using employee hours, known as the ''Twenty-four hour method,'' that takes into account normal absenteeism but excludes extraordinary absenteeism. [Footnote citation to *Hill Transportation Co.*, 102 NLRB 1015, 1021 (1953).] Under this method, when payroll records show that the basic workweek was 5 days, only the average hours of earnings of employees working 24 hours or more are used. When the basic workweek is 4 days, only the average hours or earnings of employees working 16 hours or more are used. When the basic workweek is 3 days or less, the average hours of all employees are used.

It is clear that formula two and the ''24-hour method'' are used in the ACS for calculating the gross backpay, with paragraphs 2 and 3 applying to Douglas Wright, and representative second-shift fixers, and paragraphs 6 and 7 applying to Debra Wright and representative second-shift weavers. ACS paragraph 2 (and par. 6) incorporates formula two, and ACS paragraph 3 (and par. 7) applies the 24-hour method. Other than the names and job titles of the rights, the text for the paragraph read the same. Taking Wright's as the example:

> 2. The quarterly gross backpay due Douglas Wright is the product of the average of the total regular and overtime hours worked by representative second shift fixers in each calendar quarter of the backpay period, multiplied by the regular and overtime hourly rate of pay Wright would have received, plus any vacation and holiday pay to which Wright would have been entitled.
>
> 3. The average regular and overtime hours of representative second shift fixers are the hours of all second shift fixers employed by the Respondent during the liability period who worked a minimum of twenty-four (24) hours per week in a forty (40) hour workweek or, who worked a minimum of sixteen (16) hours per week in a thirty-two (32) hour workweek. When all representative second shift fixers worked less than sixteen (16) hours in a workweek, the average of the total number of regular and overtime hours worked by all second shift fixers for that week was used.

2. Discussion

Bradshaw testified that the 24-hour method was applied in making the calculations for the ACS. Thus, second-shift fixers or weavers who did not work at least 24 hours (3 days) in a week were not included with the group of representative employees for that week. (1:19, 24, 46.) For its compliance investigation, NLRB Region 11 relied on Minette's records to compile the representative employees and hours. (1:18, 47.) During the compliance investigation, Bradshaw testified, Minette did not contend that the Wrights would have been laid off during any of the liability (backpay) period. Minette did argue, however, the some of the representative fixers and weavers suffered temporary layoffs because Minette had insufficient work. (1:47–48.) Because it was not shown that the Wrights would have been included in the temporary layoffs, the backpay was computed as if the Wrights would not have been laid off. (1:48–49, 54, 105.) In any event, Bradshaw testified, the 24-hour method was applied and it makes allowance for employees who miss a day or two (as many as 16 hours) of work in a 40-hour week for whatever reason. (1:19–20, 49–54.)

But that is where the dispute arises here. In its answer Minette denies that the hours of certain named fixers and weavers should be excluded from calculating the hours of the representative group because no additional work was available for them in the specified weeks. By including the hours of these individuals for the weeks in question (hours excluded by the ACS because the individuals worked fewer than 24 hours in a 40-hour week), Minette, in its answer, would reduce the average weekly hours of the representative group—thereby reducing the gross backpay due.

Although the answer does not explain Minette's theory, at trial and on brief Minette articulates its theory as follows. *After* the April 30, 1990 discharges of the Wrights, Minette's business suffered a decline in the department where the Wrights worked, and Minette periodically placed some of its employees on temporary layoff. (Br. 16.)

In support of the business-decline position, Minette cites testimony (2:499, 503) by Sheila Gardner, a former personnel director at Minette. Gardner testified that Wanda Neal and then Neal's assistant, Melodie Springs, preceded her as Minette's personnel director. (2:498.) Neal testified that she served as Minette's personnel director for 3 years, leaving at some point in 1992. (2:533.) Neal has been the human resources director at another company since November 1992. (2:533.) Presumably she left Minette shortly before assuming her duties with her current employer in November 1992. Melodie Springs apparently did not serve long in the person-

nel director position at Minette, for Gardner began signing documents as early as November 1992 while she was the personnel director for Minette. (2:497–498; R. Exh. 34 at 13, 14.) Gardner explains that she was the personnel director for a little over a year. (2:516.) While she was personnel director at Minette, Gardner testified, business was slow in the bedspread department until about mid-1993. (2:499.)

Over the General Counsel's objection (lack of personal knowledge of the actual selection process), Gardner (2:502–504, 515, 518–519, 526) and Neal (2:536–544) described a practice at Minette whereby employees were rotated for temporary layoffs due to lack of work. This was done on a weekly basis. The practice is of long standing, but it is not based on any written policy. Although the general procedure is to rotate the affected personnel (less than fully trained personnel are not left alone on the job), the practice also includes accepting volunteers who choose to take off work for the designated hours that week.

Documents are in evidence showing four second-shift fixers (R. Exh. 34) and three second-shift weavers (R. Exh. 33) who were temporarily laid off due to a lack of work at various times. The dates begin with early November 1991 and run through January 30, 1993, for the fixers. (R. Exh. 34.) Except for the week of November 9, 1991, only one employee is affected for a specific week. For the weavers the time frame is early January 1992 through April 11, 1992 (R. Exh. 33), with two weavers missing 2 weeks during the time frame and one, C. L. Morrow, missing one for which Minette reported to the Employment Security Commission (ESC) of North Carolina as being temporarily laid off.

As Gardner and Neal describe the practice, after the supervisors do the actual selecting for layoff due to lack of work (for which layoff someone may volunteer), the affected employee does not work the designated hours that week. The following Monday the supervisor submits to personnel a list of employees who worked no more than 23 hours the preceding week. (2:520–521.) In North Carolina, unemployment benefits may be claimed by an employee who is temporarily laid off. As the ESC instruction (R. Exh. 35) explain, ''A temporary layoff occurs when an employee works less than three (3) customarily scheduled full-time days due to lack of work.'' (For less than a 40-hour week, the definition provides further.) Neal, Springs, and Gardner signed the ESC forms, in evidence, under a certification by the employer stating, ''I certify this benefit claim was completed in accordance with the regulation prescribed by the North Carolina Employment Security Law.'' Although there is a box for certification by the affected employee (that he was available for work), item 18 of the instructions (R. Exh. 35) states that the worker's certification is optional. None of the benefit claim forms in evidence (20 claims as R. Exh. 34 for the fixers, and 5 claims as R. Exh. 33 for the weavers) reflects a signature by the employee claimant. Minette apparently files claims on behalf of the claimant employee.

As the General Counsel vigorously contends, none of the participants in the purported layoffs testified. The plant manager did not appear and explain why a layoff was necessary. Unlike *Superior Export Packing Co.*, 299 NLRB 61, 63 (1990), no sales data were offered to show a drop in sales. No production records were introduced here showing that Minette's output of home furnishing textile products (particularly for the bedspread department where the Wrights apparently worked) dropped during the backpay period. No one testified as to the number of fixers and weavers on the second shift during the weeks and months before April 30, 1990, compared that number to the number working during the backpay period, and interpreted the significance of the numbers in relation to the production and sales data.

Fixers are hired and fixers leave the second shift. At times there are more than three fixers (apparently the number immediately before Douglas Wright's discharge) at one time, and as many as five or more appearing at times during late 1991. The quarterly hours worked by, for example, the fixers appear to show a drop for most quarters in 1992, particularly when the figures advanced by Minette are used. Even assuming that business declined, and that temporary layoffs became necessary, no supervisor took the witness stand to describe how he or she selected employees for layoff or whether all or most such layoffs were satisfied by volunteers desiring time off for fishing, hunting, travel, or other personal business. More in point, no supervisor testified that either Douglas Wright or Debra Wright would have been laid off even for a single day during the backpay period.

The evidence fails to establish that there was in fact a decline in production in the department where Douglas Wright worked as a fixer and his wife, Debra Wright, worked as a weaver. The evidence fails to show that, in fact as opposed to assumption by former personnel directors, the employees who are identified as having been laid off due to lack of work did not in fact volunteer for such temporary layoffs. Finally, and more in point, the evidence especially fails to show that either Douglas or Debra Wright (neither of whom was temporarily laid off before their discharge) in fact would have been selected for any temporary layoff during the backpay period. Accordingly, I find that the gross backpay formula set forth in the ACS is an appropriate one and not an irrational formula.

D. *Vacation Benefits*

ACS paragraph 12 alleges that employees of Minette, throughout the liability period, enjoyed nine paid holidays per year and that the Wrights would have received such pay. Admitting the number of paid holidays in its answer and at the hearing (2:251), Minette asserts in its answer that, to qualify for holiday pay, an employee must work the scheduled days before and after the holiday. Not knowing whether the Wrights would have so qualified, Minette asserts that it must deny the allegation, reserving the right to present evidence that the Wrights were not eligible.

In calculating the gross backpay due, NLRB Region 11 included the annual nine paid holidays in the ACS. (1:26, Bradshaw.) Before his discharge by Minette, Wright testified, he qualified for all paid holidays. (1:120–121.) Debra Wright testified similarly. (2:252.) As Minette adduced no evidence showing either Wright to have been ineligible for any of the paid holidays, and on brief makes no ineligibility contention, I find that the ACS properly includes credit for the paid holidays the Wrights would have enjoyed at Minette had Respondent not unlawfully discharged them on April 30, 1990.

E. *The Backpay Quarters*

1. Introduction: no willful loss of interim earnings

Minette contends that Douglas and Debra Wright each incurred a willful loss of earnings at various times during the backpay period. Minette includes on brief its calculations for all line items, including those which it contests. Countering Minette's contention of a willful loss, the General Counsel argues that the Wrights diligently sought, and eventually found, interim employment during most of the backpay period (saving expenses by driving together to work when they could), and that there was no willful loss of interim earnings. Additionally, the Government attaches to its brief recalculated amounts for the line item figures that need modification based on the evidence adduced at the hearing. Finding the Government's witnesses credible, and disbelieving Minette's witnesses were not credited, I find no willful loss of interim earnings by either Wright, and I further find most of the Government's figures to be correct.

Appendix D attached to the ACS is the calculation page for Van Douglas Wright. After setting forth the gross backpay (L. 1), it lists the interim earnings (L. 2), subtracts the expenses (L. 3) to give the net interim earnings (L. 4), and subtracts that (L. 4) from line 1 (gross backpay) to give the net backpay (L. 5). Appendix E does the same for Debra Wright. Footnotes explain many of the entries. Eventually, when Minette pays the backpay due, NLRB Region 11 will calculate the interest due and that interest is added to the backpay due to produce the total backpay due. Interest accumulates until the backpay is paid. See NLRB Casehandling Manual (Part Three), section 10555.7.

Most of the General Counsel's recalculated figures are for expenses, and generally this is for mileage. During the compliance investigation the Wrights estimated the mileage they had traveled to their jobs. The distance to some interim employers turns out to have been shorter than the Wrights estimated. At trial the parties stipulated to the distances from the Wrights' residence to the various employers. (2:245–247.) Based on the stipulated distances, the General Counsel has revised several of the expense lines in appendices D and E. The stipulated distances, expressed in roundtrip mileage, are as follows to the interim employers (from the Wrights' residence), as compared to a roundtrip distance to Minette of 28 miles, with the second column of numbers being the extra distance, if any:

Doran Textiles	26	0
Woodbridge	6	0
Elizabeth Weaving	30	2
Carpet Industries	12	0
Stonecutter Mills	86	58
Reeves Brothers	28	0

As the distance to Minette is greater than that to either Doran, Woodbridge Handi Mart, Carpet Industries, or to Reeves Brothers, no allowance for mileage is allowable except where the Wrights had to travel separately when they would have driven together at Minette.

In the following summary, I refer to the revised figures submitted by the General Counsel on brief. The revised figures are shown on a revised appendix D and revised appendix E to the ACS. Revised appendices D and E are attached as appendix B to the General Counsel's brief. The revised figures, and revised footnotes, are based on adjustments made by the General Counsel based on the evidence and stipulations at the hearing. The adjustments (30 in number) appear as appendix A to the Government's brief. Figures from my summary appear for each quarter and in tabulated form later in this decision under the heading for ''Recapitulation.'' Interest is not shown in this decision because, as I noted a moment ago, that calculation is made when a respondent issues a check for the backpay bill. That is, interest accumulates until the backpay is paid.

2. Second quarter 1990

a. *Douglas Wright*

No dispute remains for this quarter concerning Douglas Wright because the General Counsel has deleted (adjustment 9; revised app. D) the Government's claim that Wright incurred reimbursable mileage expense. The parties agree that (with line items rounded) the net backpay for this quarter is $2645. Thus, the figures are:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$1,3910	$1,265	——	$1,265	$2,645

b. *Debra Wright*

No dispute remains for this quarter concerning Debra Wright because, based on the stipulated mileage distances, the General Counsel has reduced to $14 the amount of allowable expenses to be deducted from interim earnings. The $14 matches Minette's figure. The parties agree that the net backpay is $2943. Thus, the figures are:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$1,3200	$271	$14	$257	$2,943

3. Third quarter 1990

a. *Douglas Wright*

No dispute remains for this quarter respecting Wright because, based on the stipulated distances to the interim employers, the General Counsel has deleted any claim for mileage for this quarter. The parties agree that the net backpay is $1595. Thus, the figures are:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$1,5523	$3,928	——	$3,928	$1,595

b. *Debra Wright*

The only difference here is the mileage claimed for 5 days the week of August 13 through 17, or a difference of $31.20 (24 cents x 26 miles x 5 days). Debra Wright began work at Doran Textiles on Monday, July 30, 1990. She testified that, although Douglas Wright also was working the first shift at Doran, she had to drive separately because, as she was in training, her hours were different. At the completion of her training ''within a couple of weeks'' she moved to the second shift (when she also drove by herself). (2:262–263, 311–312.) At the hearing Minette introduced, through Doran's personnel manager, a status change form (R. Exh. 16) showing that Debra Wright's transfer to the second shift was effective on Saturday, August 18, 1990. (2:368.) From these facts Minette (Br. 37, fn. 8) argues that Debra Wright drove for her training of 2 weeks (through Friday, August 10) but that no claim should be allowed for the third week because she and Wright could have driven together.

Minette's contention distorts the evidence. It is clear that Debra Wright was estimating the time of her training as being about 2 weeks, after which training she was placed on the second shift. The fact that the transfer was effective on August 18, and not August 11, does not mean as Minette argues that the Wrights drove together to work, or could have done so, the 5 days of August 13 through 17. Especially is this so in light of Debra Wright's testimony that it was toward the end of their employment at Doran when they drove together. (2:343–344.) If anything, the exhibit (R. Exh. 16) indicates that Debra Wright trained for 3 weeks rather than for 2 weeks. Rejecting Minette's argument as without merit, I find the General Counsel's expense figure of $281 (adjustment 3) to be correct, with the net backpay for the quarter being $3083. The figures are:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$5,558	$2,756	$281	$2,475	$3,083

4. Fourth quarter 1990

a. *Douglas Wright*

A difference exists here about the gross backpay. Agreeing with the General Counsel that the initial figure would be $5359, Minette contends (Br. 52–53) that such amount should be reduced to $4874 because Wright's attendance calendar (R. Exh. 14) at Doran shows that Wright was absent the 5 days of October 15 through 19, 1990. (2:358.) Wright confirms he was out sick for 6 days in October. (1:203.) Although the General Counsel does not address this 5-day absence, the Government (adjustment 14) would reduce Debra Wright's gross backpay for the quarter on the basis that she was absent due to illness that week, plus Monday, October 22. Debra Wright's attendance calendar (R. Exh. 17) shows no absence for the week of October 15; she did not testify that she was absent that week; and Minette makes no contention that she was absent that week. Thus, it appears that the Government has erroneously applied the adjustment for that week to Debra Wright rather than to Douglas Wright.

In light of the foregoing, Minette's figure of $4874 for the gross backpay appears to be correct. As parties agree on the interim earnings expenses, and net interim earnings, I preliminarily find, in agreement with Minette, that the net backpay due Wright for this quarter is $1094. I write ''preliminarily'' because an adjustment must be made for an error in arithmetic for the calculation of average weekly hours of representative employees at Minette the week ending December 8, 1990. Appendix A (p. 3) to the ACS averages the hours for that week to be 27.3 rather than the 37.3 (112 hours divided by 3) for the identical figures on the week ending December 22, 1990. Correcting that error adds $105 (10 hours x the $10.54 Wright would have been earning at Minette) to the gross backpay figure ($4979) and is carried to the bottom line, increasing the net backpay to $1199. The figures are:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$4,979	$3,787	$7	$3,780	$1,199

b. *Debra Wright*

In light of the above discussion about Douglas Wright, the Government's adjustment 14, reducing Debra Wright's gross backpay for a 6-day absence beginning October 15, is misapplied here. Before that misapplication the General Counsel's figure of $4127 for the gross backpay (app. E at 3, to ACS) matched Minette's entry for the item (Br. 38). Accordingly, I find that the correct gross backpay figure is $4127. The parties agree that interim earnings are $3624, but list different amounts for allowable expenses. The General Counsel's adjustment 4 ($343 for mileage for 55 days) is different from the $306 shown in appendix B at 3, to the Government's brief. Minette's computation (Br. 38–39), however, correctly shows that Debra Wright drove alone only 18 days. Finding, in agreement with Minette, that the correct figure is $112 for allowable expenses, I further find $3512 to be the correct amount of net interim earnings. This results in net backpay being $615. The figures are:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$4,127	$3,624	$112	$3,512	$615

5. First quarter 1991

a. *Douglas Wright*

Initially agreeing with the General Counsel that Wright's gross backpay would be $5138 (Br. 54), Minette observes that Wright was absent from work for 3 days, possibly 4, beginning Friday, January 11 through Tuesday, January 15, 1991. (At this interim employer, Elizabeth Weaving, Wright sometimes worked 6-day weeks. 1:210.) Minette would subtract 3 days' pay, suggesting a gross backpay figure of $4885. Although the Government notes (Br. app. A at 8) the missed days at adjustments 26 and 27, the General Counsel applies that adjustment only to mileage expenses, not to

gross backpay, on the recalculated appendix D (Douglas Wright) attached to the Government's brief (app. B to the brief).

The problem with Minette's contention is that the days of absence fall into separate workweeks (either 1 and 2 or, at most, 2 and 2 absences in the successive weeks). To charge Wright for these absences would penalize him twice, the first being with the adoption of the 24-hour method (gross backpay based on representative employees who work at least 24 hours in the week). That is, normal absenteeism (up to 2 days in a workweek) already is factored into the gross backpay formula so as to reduce (at least potentially) the gross backpay by representative employees who have missed work up to 2 days (16 hours). This, apparently, is why the Agency's compliance manual makes the correlative provision that backpay is tolled when a discriminatee is unable to work because of an illness lasting ''3 days or more.'' NLRB Casehandling Manual (Part Three), section 10546.2. Stated differently, backpay is not tolled (the employee is not considered unavailable) when the discriminatee misses interim work, because of illness, 2 days or less in a single workweek. Making no subtraction here for Wright's mid-January illness, I find the correct gross backpay figure to be $5138.

Although the parties stipulated (2:396) that Wright's interim earnings for the quarter are $3969, and the General Counsel noted this in adjustment 20 (and adjustment 26), the General Counsel, apparently inadvertently, failed to list the stipulated figure on the recalculated appendix D at 1, showing instead the unexplained amount of $4241. As Minette does, I shall use the stipulated figure of $3969 for interim earnings. As the parties agree that expenses were $29, that puts net interim earnings at $3940 and net backpay at $1198. The figures are:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$5,138	$3,969	$29	$3,940	$1,198

b. *Debra Wright*

The parties agree, initially, that the gross backpay here would be $4827. They also agree that allowance should be made for 3, or possibly 4 (the evidence is unclear) days which she missed when out with the flu in mid-January. The parties apply the adjustment at different points, however, with Minette (Br. 39) deducting it from the gross backpay, and the General Counsel (adjustment 26) adding it to interim earnings. Minette's adjustment is for 3 days, whereas the General Counsel charges Debra Wright for a 4-day absence. The evidence is unclear on the number of days absent, mainly because no attendance calendar from the interim employer (Elizabeth Weaving) is in evidence specifying the actual workdays missed.

Regardless of whether 3 days or 4 is the correct number, as with Douglas Wright in the section above, Debra Wright's backpay is not tolled because she was absent no more than 2 days in each of 2 separate workweeks. Accordingly, I find her gross backpay to be $4827 and her interim earnings to be $2966. With no allowable expenses claimed, the net interim earnings figure is $266, resulting in a net backpay figure of $1861. Thus:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$4,827	$2,966	——	$2,966	$1,861

6. Second quarter 1991

a. *Douglas Wright*

Were it not for a mid-April absence by Wright of 3 days for family illness (with the first day on Friday, April 12), the parties would agree to a gross backpay figure of $7562. Minette, again, would subtract 3 days' pay from Wright's gross backpay. (Br. 55.) That is not correct because an illness is considered for each workweek. I therefore find the gross backpay to be $7562. The parties stipulated (2:396) that the figure for interim earnings is $5066. They differ by a couple of dollars on the mileage expense, in part because the General Counsel apparently would apply a mileage rate of 25 cents (adjustment 25; revised app. D). The mileage rate for federal employees however, (the standard used, NLRB Casehandling Manual (Part Three), sec. 10544) did not increase from 24 cents to 25 cents a mile until June 30, 1991 (see NLRB Administrative Bulletin 91-55, July 8, 1991, of which I take official notice). Accordingly, I find the mileage expense to be $28, as Minette calculates. That renders a net interim earnings figure of $5038, resulting in a net backpay sum of $2524 and figures of:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$7,562	$5,066	$28	$5,038	$2,524

b. *Debra Wright*

Respecting the second quarter of 1991 for Debra Wright, the parties have differences on the merits respecting whether there was a willful loss of earnings. Although agreeing with the General Counsel that the gross backpay initially would be $6040, Minette (Br. 40) would subtract for her 3-day absence in mid-April for family illness. These are the same days that her husband was absent. As with Douglas Wright, above, I find no merit to Minette's position. I therefore list the gross backpay at $6040.

The parties stipulated (2:397) that Debra Wright's actual interim earnings were $966. Minette contends, however, that she incurred a willful loss of earnings when she quit her interim employment with Elizabeth Weaving on April 22, 1991. She did not again obtain employment until August 5, 1991, when she went to work for Carpet Industries. As summarized earlier under the topic for governing legal principles, when a discriminatee voluntarily quits interim employment, the burden shifts from the Respondent to the Government to show that the decision to quit was reasonable. *Big Three Industrial Gas*, 263 NLRB 1189, 1199 (1982). The General Counsel argues (Br. 23) that Debra Wright's voluntarily quit

at Elizabeth Weaving was ''not unreasonable.'' The Government's actual burden to establish that the quitting was ''justified'' or ''reasonable'' is affirmative and heavier than merely demonstrating that the quitting was ''not unreasonable.''

Debra Wright began work at Elizabeth Weaving on December 10, 1990, and quit her employment there on April 22, 1991. (App. E to ACS, fn 7; R. Exh. 27 at 3; R. Exh. 30; 2:279.) Although her base hourly rate was $7 (2:266; R. Exh. 27 at 3), she expected to earn, with incentive production, about $8 an hour. Moreover, her husband would earn about $2 an hour more than he was receiving at Doran. (2:265.) At Elizabeth Weaving, Debra Wright worked as a weaver and Douglas Wright worked as a loom fixer (1:137). They worked together. (1:175; 2:325.) After their training, they were transferred to the second shift. (R. Exhs. 24, 28.)

Because of difficulties Debra Wright had trying to learn the production process at Elizabeth Weaving, her pay never rose above $7 an hour. (2:270.) As the second-shift supervisor at Elizabeth Weaving, Harry Webb supervised both weavers and fixers. (2:273, 546–547, 556.) On January 17 Webb warned (R. Exh. 8) Debra Wright for the poor quality of the product. (2:276, 316–317.) He also criticized her several times on the defects in the quality of her work. (2:273, 277.) In so doing, he would bring the cloth out to her and, in the presence of other employees, tell her, in sarcastic (smartmouthy) tones, that she should have seen the defects. He singled her out in this fashion, but with other weavers he handled any such matters away from the production area. This public censure humiliated Wright. (2:273, 277–278, 321–322.) Webb denies much of Debra Wright's version, including her testimony of public criticism and singling out. (2:551, 566.) Debra Wright testified with a more sincere and convincing demeanor than did Webb, and I credit her and do not believe him on disputed matters. Webb concedes that his other weavers were experienced at Elizabeth Weaving and nearly always earned at the incentive production rate and that he earns more when the weavers are more efficient. (2:557, 558, 559–562.)

Eventually Debra Wright applied to the first-shift supervisor for transfer to that shift, but she was unsuccessful in her request. (2:274, 276, 323.) Similarly, she was unsuccessful in asking Webb for transfer to a yarn service position (2:274) or to another set of looms. (2:341.) She did not complain to the personnel manager or to the plant manager about Webb's treatment of her, nor did she request of them that she be transferred to the first shift. (2:322–323.) During her last several days at Elizabeth Weaving, Wright testified, Webb criticized her ''pretty bad.'' She began having anxiety attacks. On her last day she told her husband that she just could not take it. Fearing for her health, Wright told Webb that she was going home and that she was not putting up with it any more. She then left the plant. (2:280–282, 323.) She had not reported her stress to anyone in management. (2:326.) On brief (at 28) Minette, implying impeachment, observes that during the compliance investigation Debra Wright told the investigator, according to his notes (R. Exh. 1 at 12), that she quit because the supervisor tried to embarrass weavers in front of other weavers regarding job quality. Minette wisely does not argue that the one statement appearing in the Board Agent Finger's notes constitutes a full description of Debra Wright's problem as she described it to him. It does, however, correctly point to the source of her problem at Elizabeth Weaving, Supervisor Webb. Moreover, the notes are merely the interview notes by Agent Finger, not a statement signed or adopted by Debra Wright, and with no contention that the interview notes were intended to be a full description. At trial Debra Wright (with supporting testimony by Douglas Wright) provided the full description.

During the trial Minette introduced (authenticity stipulated, 2:478) two pages of the medical history notes (R. Exh. 31) maintained by Dr. J. A. Injejikian, the Wrights' family physician (1:143, 217; 2:290; R. Exhs. 31, 32), concerning Debra Wright. Although many of the words in the notes can be read, Dr. Injejikian did not testify to interpret his notes or to explain the basis for or significance of any entries or prescriptions. For relevance, counsel stated that the notes show Debra Wright has consulted the doctor since 1985 for problems with ''nerves'' and that they also show she visited the doctor only once (January 14) during 1991 before quitting Elizabeth Weaving, whereas she testified that she had been to see the doctor two or three times before quitting. (2:478.) On brief (at 28) Minette omits the latter point. Wright did not testify to two or three visits to the doctor, although at one point (2:281) she started to describe an injury to her arm and that Paige Dixon, who then handled personnel matters before being named human resources director (2:434–435, 471), made an appointment for Wright the next day to see the doctor. It is unclear from the limited testimony whether the injury occurred on the job or elsewhere. If the former, then ''the doctor'' no doubt would have been a doctor (unlikely to be the Wrights' family physician) retained by Elizabeth Weaving.

In any event, the unexplained notes of Dr. Injejikian do not support Minette's argument, for any preexisting problem Debra Wright had with either ''nerves'' or ''anxiety'' (both terms appear in the notes for 1985) may well have been aggravated by 1991 events at Elizabeth Weaving. On rebuttal Wright testified that an anxiety attack is substantially different from, and more serious than, a problem with being nervous in that with an anxiety attack the heart speeds up, breath becomes short, and the person feels as if she is suffering a heart attack. (2:577.) She felt those symptoms in mid-January, and Dr. Injejikian prescribed Buspar for her condition. (2:575–576.) The doctor's notes (R. Exh. 31) reflect that he indeed prescribed Buspar on January 14 for anxiety.

Minette asserts (Br. 28) that Wright visited the doctor on January 14 to obtain treatment for a sore throat and to go on a weight reduction program, implying anxiety was not even one reason for the visit. That implied argument ignores the very notes Minette cites. Debra Wright testified that she went there for the anxiety problem and when Dr. Injejikian checked her he found that she also had a sore throat. (2:578.) As the notes reflect, weight was a problem she had consulted the doctor about as far back as December 1985. His notes also reflect that he wrote, on January 14, that Debra Wright smoked. As Dr. Injejikian had been Debra Wright's family doctor for several years, he may well have made these inquiries on his own. In the absence of testimony by Dr. Injejikian, there in no point in speculating on why the notes are there or on what they mean. The important point, however, is that the notes confirm Debra Wright's testimony that she went to him on January 14 for anxiety and that he gave her some sample Buspar pills. She testified that she did not

need to visit him again because she had the Buspar pills. (2:580, 581–582.)

As I noted earlier in this decision, Debra Wright separated from Douglas Wright on April 22 (the day she quit Elizabeth Weaving) and moved in with her Mother (whose property adjoins that of Douglas Wright). Minette's final contention is that the real reason Wright quit is because she and Douglas Wright separated the very day she quit (2:324) and she quit because she was emotionally upset over her dissolving marriage. Thus, any anxiety attack was caused not by Minette but by her marital problems. (Br. 29.) Acknowledging that her marital difficulties were emotionally upsetting to her, that she had stress at home as well as on the job, and that she and her husband got along much better after the separation, Debra Wright denies that her domestic problems caused the stress at work and denies that she quit Elizabeth Weaving because she was separating from her husband. (2:324–326.) She strongly asserts that she would not have quit her employment there simply because Douglas Wright worked there. (2:343.)

Crediting Debra Wright, I find that she quit Elizabeth Weaving not because of her problems at home, but because of the stress caused on the job. The job stress, I find, resulted when her slow rate of progress in learning operation of the looms at Elizabeth Weaving prompted Supervisor Webb to humiliate her before other employees. Such unprofessional conduct by Webb caused Debra Wright to suffer anxiety attacks. When Webb criticized her rather strongly over the last few days, Wright had withstood all she could and, fearing for her health, quit on April 22 because of the stress created by the nature of the job and Webb's unprofessional method of supervision. Finding that Debra Wright's decision to quit her employment at Elizabeth Weaving on April 22, 1991, was a reasonable decision, I further find that her interim earnings at Elizabeth Weaving should not be projected until her next employment. Thus, her figures for the second quarter of 1991 are:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$6,040	$966	——	$966	$5,074

7. Third quarter 1991

a. *Douglas Wright*

For this quarter the parties are in agreement as to everything except a dollar for interim expenses. Interim earnings are stipulated at 2:396–397. Minette would not award mileage expense for 2 days when Wright was absent during this quarter. The General Counsel makes no deduction for such absence. I agree with Minette. That results in rounded figures of:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$5,999	$5,101	$32	$5,069	$930

b. *Debra Wright*

The parties agree that the gross backpay here is $5285. Because of Minette's contention that Debra Wright incurred a willful loss of earnings by quitting her employment at Elizabeth Weaving during the previous quarter, the parties disagree here on the correct amount of the interim earnings. As the record reflects, after leaving Elizabeth Weaving, Debra Wright diligently sought work elsewhere. Eventually, on August 5, 1991, she found employment at Carpet Industries where she worked as a weaver through September 20. On September 21 Wright was injured in a car accident and was sidelined from work for 2 weeks. When she was ready to return to work she learned that she and nearly everyone else had been laid off permanently as a result of a near shutdown of the plant. (2:287–290, 326–327; G.C. Exh. 3.) She immediately began searching for new employment. (2:290.) Agreeing with the General Counsel, I find her interim earnings to be $1662 and her deductible expenses (adjustment 5) to be, as Minette agrees, $105. The resulting figures are:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$5,285	$1,662	$105	$1,557	$3,728

The above figures are based on NLRB Region 11's having counted the third quarter as ending on September 20. Thus, Wright's injury and 2-week unavailability occurred during the fourth quarter for our purposes. At trial the General Counsel moved to amend the ACS to subtract for Debra Wright's unavailability. (1:7–12.) That was not finalized, and the General Counsel's posthearing adjustments and revised appendix E do not reflect any adjustment for this unavailability. Minette addresses it for the fourth quarter, and I do likewise.

8. Fourth quarter 1991

a. *Douglas Wright*

(1) Facts

The major dispute here centers on the circumstances leading up to Wright's discharge by Elizabeth Weaving on (Thursday) October 10, 1991. Recall that Wright worked the second shift at Elizabeth Weaving. (1:203–204; 2:306; R. Exh. 24.) The second shift begins at 2 p.m. (2:438, 549.) Elizabeth Weaving's attendance rules (R. Exh. 10) call for an employee, who is going to be tardy or absent, to contact his supervisor at least 1 hour before the shift begins. Thus, under the rules Wright needed to call Supervisor Harry Webb by 1 p.m. if Wright was going to be tardy or absent for his shift. If there is no call, an absence is counted as unexcused. (2:438.)

Douglas Wright cannot read or write. (1:152.) Paige Dixon, who then handled personnel matters for Elizabeth Weaving (2:435, 471), testified that she reviews the attendance policy with all new employees and reads it to those who are unable to do so themselves. (2:437–438, 468–470.) Dixon does not know whether Wright can read, and was disingenuous in not directly answering whether she read it to

Wright, finally saying she read it to ''them'' (all employees, apparently) because she does not know which ones cannot read. (2:437, 470.) She concedes that with the number of employees there (approximately 110), she does not recall whether Wright indicated he understood. (2:470.) Wright testified that, when he was hired, no one gave him a copy of the attendance policy and no one explained it to him. (1:154.) Not until his discharge did he learn that he was required to call an hour before the shift. (1:154–155.)

Wright signed two earlier warnings. The first (R. Exh. 5) was for an unexcused absence on May 6 for not calling in, and the second (R. Exh. 6) was for an unexcused absence on June 17. Although acknowledging his signature on both documents (1:205, 207), Wright, who could not read what he signed, testified that he received two warnings. The first was when, after his request was denied for time off to attend the funeral of a very close friend, he took off anyway and went to the funeral. (1:205.) The second involved a dispute over the amount of one paycheck and he told the supervisor to get his ''damn'' money. The supervisor (Webb, apparently) wrote him up for cursing him, ''which I never cussed him.'' (1:205–206.) No such warning is in evidence. There is in evidence (G.C. Exh. 4) a company note excusing him for an absence on May 7 for being at his doctor's office for illness, and a May 7 note by the doctor that Wright should be excused May 6 and 7. Presumably the June 17 absence was when Wright attended the funeral. Wright asserts, without contradiction, that during his employment no one told him his job was in jeopardy. (1:225, 232.)

It is undisputed that Wright missed the first 3 days of work the week of Monday, October 7, 1991. (Wright begins his description by specifying October 6, a Sunday. 1:137. He apparently meant that Monday. His error throws off his other dates that week.) That Sunday night the only available family vehicle developed severe engine problems, so on Monday, October 7, Wright worked that day and until about midnight, by himself, replacing the engine. (1:137–140, 222.) Around 1 p.m. that Monday, Wright testified, he called Elizabeth Weaving and spoke to Paige Dixon, the person who handled personnel matters. Dixon told him to call back at 1:30 p.m. when Supervisor Webb arrived and speak to him. (Webb confirms that he arrives about 1:30 p.m. 2:553.) Wright did so, described the situation, and explained that he had no way to get to work. Webb said that would be fine. (1:138–139, 222.)

The heavy work on Monday aggravated Wright's own problem, and Tuesday morning, October 8, Wright awoke with bleeding hemorrhoids. (1:140, 223.) That morning he called the doctor's office and the earliest appointment he could get with Dr. Injejikian was for 2:30 p.m. that day. Suffering intense pain Wright passed the time either in the bathtub or in bed. (1:141.) Around 1 p.m. he asked his wife to call Elizabeth Weaving. He went to the doctor that afternoon, received some medicine, and returned home to bed. (1:141–142, 223.) Debra Wright testified that she called for Webb between 1 and 1:30 p.m. As Webb had not yet arrived she left a message with the personnel director, Paige Dixon, that Wright would not be in that day because he was suffering from bleeding hemorrhoids. She said nothing about his possibly being in later that day. (2:306–307, 338–339.) She was not aware of any policy requiring a call by 1 p.m. (2:339–340.)

According to Webb, Debra Wright called the first day about 1:30 p.m., but neither his memory nor his notes reflect what she said. (2:553–555; R. Exh. 26.) On the second day he again received a call from Debra Wright. She advised Webb that Wright was working on their vehicle. He told her he needed to talk to Wright. She said Wright possibly would be in later (to work, apparently), but he never showed and Webb never heard from him. (2:552–554.) For an unemployment hearing Dixon compiled a list (R. Exh. 25) of dates from documents, but the data for the events here come from the document (R. Exh. 26) completed by Webb. Dixon testified that she has no personal knowledge of the calls or whether she took any of the calls because that was several years ago. (2:443, 472.)

On Wednesday (October 9, the third day), Wright testified, the bleeding was even worse. Although his wife called early that morning, she could not get an appointment with Dr. Injejikian for Wright until 4 p.m. that day. At that appointment the doctor, after giving him stronger medicine, told him that if his condition persisted he would require surgery. Earlier that afternoon his wife called and reported his condition to Elizabeth Weaving. (1:142–145, 223.) Debra Wright testified that she again called between 1 and 1:30 p.m. and reported essentially as the previous day. (2:306–307, 339.) Webb records that no word was received on October 9. (R. Exhs. 25, 26; 2:555.)

On Thursday, October 10, Wright, still suffering and confined to his bed, had his stepson, David C. Irvin (about 17 as of the hearing), call the plant around 1 p.m. to say that Wright was under a doctor's care and unable to report for work but needed his paycheck to buy more medicine. Irvin went to the plant, but returned with the message that Wright had been terminated and had to turn in his uniforms to get his paycheck. (1:145–147.) Irvin confirms this. (1:234–237.) Webb testified that when he gave the check to Wright's stepson that Irvin never said what was wrong with Wright. (2:554.) Irvin asserts that he told personnel when he called and Webb in person about Wright's hemorrhoid problem. (1:235–237.) Wright was discharged effective October 10, 1991. (2:453, 555; R. Exh. 26.)

Under Elizabeth Weaving's attendance policy (R. Exh. 10), eight events are recognized as excuses. The first is a note signed by a doctor stating that the employee was too sick to work. Number 8 is ''Car trouble.'' (2:474.) Dixon testified that no medical slips were ever presented to her concerning Douglas Wright for this week. (2:449, 475.) Wright testified that he got a slip from the doctor on his first visit. (1:151.) He does not assert that he ever delivered it to Elizabeth Weaving, not even when he went there some 3 to 4 months later and spoke to Webb about reemployment. (1:164.) Apparently Wright misplaced the doctor's slip, for during the hearing, Wright testified, his wife went to the doctor's office and secured another. (1:151.) Wright apparently was referring to a January 19, 1994 slip (G.C. Exh. 6) merely reciting, over the stamped name, address, and telephone number of Dr. Injejikian, that ''Mr. Wright was under the Doctor's care from 10–7–91 to 10–15–91 for hemorrhoids.''

The parties stipulated to the authenticity of the note. (2:483.) Minette did not object to admissibility, stating that its argument is that the note is outweighed by the doctor's chart record (R. Exh. 32) for Wright listing only the date of October 11, 1991, for a consultation with Wright about his

hemorrhoids. (2:483–485.) Dr. Injejikian's notes (R. Exh. 32) reflect an entry dated October 11 that Wright ''needs surgery sooner or later'' for his hemorrhoids. The notes also appear to mention the need for an excuse for October 9 and 15, and there is an illegible reference above the numbers ''7 8 9 10th.'' Consistent with the testimony (1:150), Dr. Injejikian's chart notes (R. Exh. 32) reflect that on October 26, 1992, he performed a hemorrhoidectomy on Wright. Wright testified that since then he has had no problem. (1:150.)

As Compliance Supervisor Bradshaw testified, Board Agent Tom Finger conducted the interviews and obtained the records for the compliance investigation, under Bradshaw's supervision, during the spring of 1993. (1:15, 69, 72, 99.) As part of his investigation, Finger made notes of interviews with Debra Wright (R. Exh. 1) and with Douglas Wright (R. Exh. 2). Although Douglas Wright confirms that Finger interviewed him (1:147), the initial interview, in which discussion Elizabeth Weaving was a topic, appears to have been by telephone. (1:148.) Later Finger interviewed Wright in person at Wright's home. On that occasion Finger may have made notes, for Wright asserts that he gave a ''statement.'' Any notes were not in affidavit form, however, for the General Counsel announced that none was taken during the investigation. (1:188.) Wright testified that he met three times in person with Finger and spoke with him over the telephone three or four times. (1:187.)

What all this leads to is Minette's contention that Wright has been loose with the truth. Thus, in his notes (R. Exh. 2 at 13) (apparently part, possibly all, of these notes are the telephone notes) Finger records the reason for Wright's October 10 departure (from Elizabeth Weaving) as being a layoff resulting from a limited reduction in force (only two employees affected). This is followed by a note that (Wright) would not accept a fixing job on the ''jackhead'' loom, because it involved climbing a 15-foot ladder, harder work for the same pay rate.

According to Wright, he never mentioned a layoff to Finger, but said he had been fired or terminated because of his hemorrhoids. (1:148, 220–222.) Bradshaw acknowledges that Finger's notes at this point say nothing about termination for absenteeism. (1:101.) Respecting the jackhead looms, Wright explains that about 2 weeks before his discharge Webb wanted Wright to transfer to be a fixer for the jackhead looms. That would require training, and work on the jackheads involved climbing up and down a 15-foot ladder, and exercise which would aggravate Wright's already tender hemorrhoids a fact which Wright reported to Webb. Webb appeared to get angry that Wright would not transfer. Wright told Finger of Webb's apparent anger and that Wright believed the real reason Elizabeth Weaving fired him was because he did not take the job fixing the jackhead looms. (1:148–149, 220–221, 229.) He denies telling Finger that a weaver was laid off, causing Wright to lose his job when he did not want to work on the jackhead looms. (1:220–221.) Finger's notes reflect that Wright worked with just one weaver. Minette subpenaed Finger (R. Exh. 36), but its January 14, 1994 request (R. Exh. 37) to Acting General Counsel Daniel Silverman to permit Finger to testify was denied by Silverman's letter (R. Exh. 38) of January 24. Supervisor Webb's termination paper for Douglas Wright says nothing about any jackhead looms.

(2) Discussion

First, I do not believe Supervisor Webb or Human Resources Manager Dixon. Minette argues (Br. 33) that Webb has nothing to gain or lose here. That suggests a gain or loss in matters respecting his job. Aside from demeanor, a factor I earlier noted, Webb's own termination memo (R. Exh. 26) about Wright suggests animus. Thus, he writes that Wright not only was ''poor'' in everything from attendance through quantity and quality (yet he apparently had never told Wright he thought so), but that he also had a ''bad attitude.'' Webb may not have displayed this animus to Wright when the latter sought reemployment some 3 to 4 months after his discharge, but, I find, it was there. The fact is, I find, Supervisor Webb developed a personal distaste for Wright, and he padded his memo with negatives (about matters in addition to attendance) as his own form of punishment.

Second, the Government's version, based mostly on testimony by the Wrights, has all the appeal of stale bread. Nevertheless, crediting the essence of the Wrights' testimony, I find that they made calls to Elizabeth Weaving as they described. The burden was on Minette to show deliberate or gross misconduct demonstrating that he no longer wished to work at Elizabeth Weaving. Even Minette's version of the evidence fails to show that. It seems clear, and I find, that Wright did suffer from bleeding hemorrhoids beginning Tuesday, October 8, 1991. That resulted from the heavy work Wright did the day before. In making his own notes (possibly later that week), Webb confused the days and the callers, but he does show that he received a call about car trouble. That is consistent with the version of the Wrights.

It is not at all clear that Douglas Wright visited Dr. Injejikian before Friday, October 11. I note that the statement (G.C. Exh. 6) obtained by Debra Wright on January 19, 1994, the first day of this hearing, does not bear Dr. Injejikian's signature. I suspect that ''under the Doctor's care'' is an elastic phrase capable of covering telephone calls to the office or even the pain period before the patient has seen the doctor. Despite these shortcomings, Dr. Injejikian's finding on October 11 was that Wright needed surgery ''sooner or later.'' That the surgery came a year later, in October 1992, does not detract from the existence on October 11 of bleeding hemorrhoids. As Wright had them then, he well could have had them since Tuesday morning, October 8.

Several side issues have been given the artificial appearance of being issues of outcome determining substance. I need not resolve these paper issues. Thus, the actual sequence of events respecting Board Agent Finger's interviews and the topics raised I need not resolve, even though testimony by Finger would have helped to clarify the evidence. Similarly, while testimony by Dr. Injejikian would have been helpful, it was not critical to a resolution. It is not even necessary to resolve the possible conflict between the Wrights concerning whether they ended their separation or whether they have divorced and are living separately. Respecting the matter in issue, if they permanently separated on April 22, 1991, it is unclear how Debra Wright was assisting Douglas Wright on October 8 and 9 in calling Elizabeth Weaving. Douglas Wright's testimony, however, can be interpreted as meaning that they divorced after he was fired in October from Elizabeth Weaving. (1:219.) All these side issues are distracting, but they do not prevent a decision. Minette failed

to show that Douglas Wright knowingly disregarded any attendance rules at Elizabeth Weaving or acted in a manner showing he had no interest in his job at Elizabeth Weaving. Indeed, as for matters he had control over (such as calls to Elizabeth Weaving), the credited evidence shows that Wright acted in a manner designed to preserve his interim employment at Elizabeth Weaving.

Respecting the appropriate backpay figures for this fourth quarter of 1991, I agree with Minette (Br. 58) that Wright should receive no backpay for the week ending Saturday, October 12, 1991, because he was unavailable for work that week. As reflected in appendix A at 7, to the ACS, the representative hours for that week are 36.25 regular hours (times $10.54) and 1.6 overtime hours (times $15.81). Accordingly, I shall deduct from $5494 the sum of $407. That yields quarterly figures of:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$5,087	$958	$2	$956	$4,131

b. *Debra Wright*

As earlier noted, the ACS and the General Counsel's posthearing revisions make no adjustment for the time Debra Wright was unavailable (as a result of an automobile accident on September 21) for work the first 2 weeks of the fourth quarter of 1991. Agreeing with Minette (Br. 42–43), I find that her gross backpay should be reduced from $4566 to $3800. Other contentions of Minette are a repetition of arguments I have resolved against Minette earlier. Also, the record reflects, and I find, that Debra Wright diligently sought new employment after her layoff from Carpet Industries following her automobile accident. She next found employment at Stonecutter Mill Corporation on June 1, 1992. For the fourth quarter of 1991 I find her figures to be:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$3,800	——	——	——	$3,800

9. First quarter 1992

a. *Douglas Wright*

Minette's contention here (about employees on temporary layoff being included in the representative group so as to reduce the gross backpay) I have rejected earlier. The parties otherwise appear to agree that the gross backpay would be $4046. I find that it is. After Dr. Injejikian released Douglas Wright on October 14 or 15 to return to work, Wright diligently sought other employment, and Minette does not contend otherwise. Eventually he found work at Stonecutter Mills Corporation on May 27, 1992. Aside from Minette's contention about his incurring a willful loss of earnings by getting fired by Elizabeth Weaving (a contention I have found unsubstantiated), the parties appear to agree that Wright's interim earnings for this quarter are zero. Thus, I find the figures for this quarter to be:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$4,046	——	——	——	$4,046

b. *Debra Wright*

Already having rejected Minette's contention for the representative group of employees, I find the gross backpay figure to be $4114. Other than its rejected contention, Minette apparently does not dispute this figure. Minette also renews its rejected contention that Debra Wright unjustifiably resigned from Elizabeth Weaving. Otherwise, Minette apparently does not dispute that Debra Wright had no interim earnings during this first quarter of 1992. Accordingly, I find the figures to be:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$4,114	——	——	——	$4,114

10. Second quarter 1992

a. *Douglas Wright*

Other than its previously rejected contentions about the representative group and Wright's discharge by Elizabeth Weaving, the only issue Minette raises here pertains to expenses. At footnote 12 of revised appendix D, the General Counsel claims mileage expense of $363 (58 miles x 25 days x 25 cents per mile). Contending that Wright worked only 17 days during the quarter, with his last day on June 20, Minette asserts (Br. 61–62) that the correct figure, when rounded, is $247. Minette cites no reference in support of its claim that Wright worked only through June 20. The evidence fails to show that. Accordingly, I find the quarter's figures to be:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$5,325	$1,402	$363	$1,039	$4,286

b. *Debra Wright*

The only new issue here pertains to expenses. At footnote 12 of revised appendix E (fn. 12 itself appears on the original app. E) the General Counsel claims mileage expense of $302 for Debra Wright's job search of 1208 miles during the second quarter. For most of this search the Wrights traveled together. (2:343.) The expense is claimed as a reduction from interim earnings of $1408. Minette characterizes the 1208 miles as a ''guess,'' quoting a term counsel suggested to the witness following her description of the process she and Douglas Wright had used to estimate the mileage. As Debra

Wright had a basis for arriving at the number, it was an estimate rather than an unsupported guess. (2:328–329.)

The real issue, however, is whether Wright is entitled to any expense credit. Recall two qualifications respecting expenses. First, they are used only as a deduction from interim earnings. Second, they are allowable only to the extent they exceed what would have been incurred by the discriminatee had she never been fired by the respondent, Minette here. NLRB Casehandling Manual (Part Three), section 10544. Counting 65 workdays in the quarter, times 28 roundtrip miles a day to Minette, equals 1820 miles a greater distance, and expense, than that of the job search. Accordingly, Debra Wright's job search expense is disallowed. I therefore find the quarter's figures to be:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$6,172	$1,408	——	$1,408	$4,764

11. Third quarter 1992

a. *Douglas Wright*

Other than Minette's standing contentions about the representative group and willful loss of earnings by being fired at Elizabeth Weaving, positions I have found without merit, the only issue here is expenses. (The General Counsel's fn. 13 to revised app. D adjusts for a period Wright was unavailable in this quarter.) Minette counts travel days of 40, whereas the General Counsel (revised app. D fn. 14 and adjustment 30) claims 49 days. I count 41 days based on the attendance chart's (R. Exh. 20) showing of 8 days of absence (1 in July and 7 in September). The General Counsel apparently did not factor the 8 days of absences into the Government's calculation. Thus, the expense is 58 miles x 41 days x 25 cents equals $595. I therefore find the numbers for this quarter to be:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$4,174	$3,334	$595	$2,739	$1,435

b. *Debra Wright*

The parties agree on the gross backpay, but differ somewhat on the interim earnings. At trial the parties stipulated (2:394–395) that an extra $272.14 should be added to Debra Wright's interim earnings, prorated over the third quarter and fourth quarter of 1992. The General Counsel indicated that more of that would be added to the fourth quarter. General Counsel's adjustment 18, however, does the reverse. Minette puts the majority into the fourth quarter. (Br. 10 fn. 3, 48–49.) As an equal division seems to fit the time frame better (Debra Wright left Stonecutter October 29, 1992), I shall divide the sum, and add $136 to each quarter's interim earnings. Although there is no impact in the third quarter, because interim earnings exceed the gross backpay, it will made some difference for the fourth quarter. I therefore find the third quarter's figures to be:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$3,678	$4,295	——	$4,295	——

12. Fourth quarter 1992

a. *Douglas Wright*

What differences there are in the numbers here are much ado about nothing, for there is no net backpay for this quarter (mainly because Wright was off work for 6 weeks after his surgery). Although Minette asserts (Br. 66) that Wright had only 18 days of mileage expense during the quarter, the cited references (R. Exh. 20; 2:417–418) do not support the assertion. The attendance calendar (R. Exh. 20) notes only 2 days of absence, other than the weeks lost because of surgery, and the General Counsel, at footnote 16 of revised appendix D, adjusted the travel days from 35 to 30 to reflect the plant's shutdown for the entire Christmas week. As the 30 days appears to match the attendance calendar, I find $435 (30 days x 58 miles x 25 cents per mile) to be the correct figure. Accordingly, I find the appropriate figures to be:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$2,737	$4,088	$435	$3,653	——

b. *Debra Wright*

To compute gross backpay, both parties subtract for the 7 days Debra Wright lost from October because, apparently, of injuries sustained in a car accident (2:332, 412–413; R. Exh. 22), but they subtract using different methods. The General Counsel employs (adjustment 17) a method which converts the percentage of the representative hours multiplied by the incentive rate for the third quarter representative group at Minette. The General Counsel's unexpressed rationale for the Government's choice appears to be that the third quarter represents the last full quarter and is, therefore, a more representative number. In contrast, Minette uses the incentive rate earned by the fourth quarter representative group. (These incentive pay rates are listed in appendix C to the ACS.) Minette's unarticulated reason for choosing the fourth quarter group would appear to be that it applies because that is the quarter in which the unavailability occurred.

One interesting aspect of the difference is this. Because the third quarter group had two earners, one modest and one high, the average rate was $10.93. (App. C at 1.) But in the fourth quarter R. D. Turner was the only incentive earner, and she (or he) earned the highest rate of all $14.15. (App. C at 2.) Because the unavailability occurred in the fourth quarter, I shall use the $14.15 incentive rate.

The parties also differ respecting the hours to be applied. Both use the representative hours (38 hours for each of the 2 weeks involved), but the General Counsel applies a per-

centage (based on 8 days rather than 7) of 76 hours and multiplies the resulting number of hours (60.8) times $10.93 to yield a deduction of $664.54. (Had 7 days been used the lower percentage (73.68421) times 76 hours would have produced 56 hours. That times $10.93 would have yielded $612.08.) Minette applies 53.2 hours multiplied by $14.15 for a total exclusion of $752.78. I find 53.2 hours to be correct because that is 95 percent of 56 hours (as 76 hours is 95 percent of 80 hours). Thus, I find the gross backpay to be $6149 (the starting point of both parties) less $753, or $5396.

For interim earnings the parties, as noted earlier, differ on proration of the $272, and I found it more appropriate to divide and apply it in equal parts. Thus, adding $136 to $3497, I find interim earnings to be $3633. The parties agree that expenses are $238. That results, I find, in the following figures for the quarter:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$1,5396	$3,633	$238	$3,395	$2,001

13. First quarter 1993

a. *Douglas Wright*

Aside from Minette's rejected contention about the representative group, the gross backpay here is $2883. The General Counsel has subtracted for time Wright was unavailable during the quarter. (Fn. 17 of revised app. D; adjustment 28; 2:417.) Minette would reduce its own figure on interim earnings from its expression at trial (2:417), there coinciding with the General Counsel's $3500, based on its contention that the backpay period actually ended earlier, on February 11. (Br. 68.) Again, any differences are immaterial, for there is no net backpay due in any event. Minette incorrectly limits expenses to 20 days, whereas the General Counsel (fn. 18, revised app. D; adjustment 29) properly allows them through the period of projected earnings, giving total allowable expenses of $493. Thus, the numbers are:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$2,883	$3,500	$493	$3,007	——

b. *Debra Wright*

As discussed much earlier, Minette (Br. 49–50) would end the backpay period at February 11. Because the General Counsel properly fixes the end on February 19, I find the gross backpay to be the Government's claim of $2856. As stipulated by the parties (2:393), interim earnings were $2323. The General Counsel claims allowable expenses of $210 30 days of traveling 28 miles roundtrip to Reeves Brothers, during January and February, at 25 cents per mile. Minette would limit allowable expenses to $168 on the basis that only 24 days should be counted, apparently subtracting 6 workdays by ending the liability period at February 11. I find allowable expenses to be zero. Neither party states why it lists this mileage expense. The mileage, as specified earlier in this decision, is identical respecting Reeves Brothers and Minette. As Debra Wright drove no farther to Reeves than she would have to Minette, she is not entitled to offset, against any interim earnings, any of her travel expense to Reeves. Thus, the numbers for Debra Wright's final quarter are:

Gross B/P	I/Earnings	Expenses	Net I/E	Net B/Pay
$2,856	$2,323	——	$2,323	$533

F. *Recapitulation*

Van Douglas Wright

	1990/2d	1990/3d	1990/4th	1991/1st	1991/2d	1991/3d
Gross Backpay	$3,910	$5,523	$4,979	$5,138	$7,562	$5,999
Interim Earnings	1,265	3,928	3,787	3,969	5,066	5,101
Expenses	——	——	7	29	28	32
Net I/E	1,265	3,928	3,780	3,940	5,038	5,069
Net Backpay	2,645	1,595	1,199	1,198	2,524	930

	1991/4th	1992/1st	1992/2d	1992/3d	1992/4th	1993/1st
Gross Backpay	$5,087	$,4046	$5,325	$4,174	$2,737	$2,883
Interim Earnings	958	——	1,402	3,334	4,088	3,500
Expenses	2	——	363	696	435	493
Net I/E	956	——	1,039	2,638	3,653	3,007
Net Backpay	4,131	4,046	4,286	1,536	——	——

Debra Carol Wright

	1990/2d	1990/3d	1990/4th	1991/1st	1991/2d	1991/3d
Gross Backpay	$3,200	$5,558	$4,127	$4,827	$6,040	$5,285
Interim Earnings	271	2,756	3,624	2,966	1,662	966
Expenses	14	281	112	——	——	105
Net I/E	257	2,475	3,512	2,966	1,557	966
Net Backpay	2,943	3,083	1,861	5,074	3,728	615

	1991/4th	1992/1st	1992/2d	1992/3d	1992/4th	1993/1st
Gross Backpay	$3,800	$4,114	$6,172	$3,678	$5,396	$2,856
Interim Earnings	——	——	1,408	4,295	3,633	2,323
Expenses	——	——	——	——	238	——
Net I/E	——	——	1,408	4,295	3,395	2,533
Net Backpay	3,800	4,114	4,764	——	2,001	533

Total Net Backpay Due

For Douglas Wright the General Counsel claims a total of $24,623 (plus interest), but Minette asserts (Br. 68) that, even with interest, the amount due is barely more than $12,000. The General Counsel seeks $33,505 (plus interest) for Debra Wright, while Minette would limit her to $23,824, including interest. Differing from both parties, my above tabulation yields the following totals of net backpay due (plus interest, and less taxes required by law to be withheld):

Van Douglas Wright	$24,090
Debra Carol Wright	32,516

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Minette Mills, Inc., Grover, North Carolina, its officers, agents, successors, and assigns, shall pay backpay as follows, with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and less taxes required by law to be withheld:

Van Douglas Wright	$24,090
Debra Carol Wright	32,516

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.